

TORBEN B. OVERGAARD, COMPLAINANT, VS. ATTY. GODWIN R. VALDEZ, RESPONDENT.*ADM. CASE No. 7902. March 31, 2009*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/47845d4d6e42/>

At bar is a Motion for Reconsideration,[1] dated, October 21, 2008 filed by respondent Godwin R. Valdez (Valdez), praying that the September 30, 2008 decision of this Court disbaring him from the practice of law be reconsidered by remanding the records of the case to the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline. He further prays that the IBP Commission on Bar Discipline be directed to receive his Answer, evidence and Position Paper and thereafter, that he be absolved of the charges against him and that his name be reinstated in the Roll of Attorneys.[2]

We have previously decided in *Torben B. Overgaard v. Atty. Godwin R. Valdez*,[3] that respondent Valdez committed malpractice and gross misconduct in his office as attorney and is thus unfit to continue discharging the trust reposed in him as a member of the bar.

The complainant, Torben Overgaard (Overgaard) engaged the services of respondent Valdez as his legal counsel in two cases filed by him and two cases filed against him. Despite the receipt of the full amount of legal fees of P900,000.00 as stipulated in a Retainer Agreement, the respondent refused to perform any of his obligations under their contract for legal services, ignored the complainant's request for a report of the status of the cases entrusted to his care, and rejected the complainant's demands for the return of the money paid to him.

Complainant Overgaard filed a complaint for disbarment against Valdez before the IBP. During the investigation, respondent Valdez did not participate despite due notice. He was declared in default for failure to submit an answer and attend the mandatory conference. He did not submit a position paper or attend the hearing.

On September 30, 2008, this Court held that respondent Valdez committed multiple violations of the canons of the Code of Professional Responsibility. The dispositive portion of this Decision states:

IN VIEW WHEREOF, respondent Atty. Godwin R. Valdez is hereby DISBARRED and his name is ordered STRICKEN from the Roll of Attorneys. He is ORDERED to immediately return to Torben B. Overgaard the amount of \$16,854.00 or its equivalent in Philippine Currency at the time of actual payment, with legal interest of six percent (6%) per annum from November 27, 2006, the date of extra-judicial demand. A twelve percent (12%) interest per annum, in lieu of six percent (6%), shall be imposed on such amount from the date of promulgation of this decision until the payment thereof. He is further ORDERED to immediately return all papers and documents received from the complainant.[4]

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Hence, this Motion for Reconsideration filed on October 21, 2008, by respondent Valdez, based on the following grounds:

- RESPONDENT HAD ABSOLUTELY NO KNOWLEDGE THAT COMPLAINANT HAD FILED CHARGES AGAINST HIM AND THAT THERE WERE DISBARMENT PROCEEDINGS AND AN INVESTIGATION CONDUCTED BY THE INTEGRATED BAR OF THE PHILIPPINES.

- HAD HE BEEN GIVEN AN OPPORTUNITY TO BE HEARD, HE WOULD HAVE PRESENTED STRONG, VALID AND MERITORIOUS DEFENSES TO THE CHARGES LEVELLED AGAINST HIM WHICH DEFENSES, CORRECTLY APPRECIATED, WOULD HAVE TOTALLY EXONERATED HIM.[5]

We deny the Motion for Reconsideration.

On the first issue, the respondent argues that the IBP has no jurisdiction over him since proof of service of the initiatory pleading to the defendant is a jurisdictional requirement.[6] He states in his Motion for Reconsideration that "he had no inkling whatsoever of the existence of the disbarment case filed by the complainant." [7] He asserts that, in September 2006, he "abruptly abandoned his office at Suite 402 Pacific Irvine Bldg., 2746 Zenaida St., at Makati City following persistent and serious threats to his physical safety and security x x x." [8] On the advice of his close friends and clients to "lie low" and "make himself `scarce,'" [9] he stayed for a few days in his residence at Imus, Cavite then relocated to Malaybalay City, Bukidnon.[10] He has been holding office and residing in Bukidnon since then, and he only found out about the decision from a colleague in Bukidnon who read the decision from the Court's website.

He claims that because he "abruptly abandoned" [11] his Makati office on September 2006, he was not able to receive the demand letter [12] sent by the complainant. [13] He was also not able to receive any of the notices, orders and other papers pertaining to the disbarment proceedings because at the time these were sent to his Makati office address, he was already holding office in Bukidnon.

Complainant Overgaard filed an "Opposition/Comment to the Motion for Reconsideration" [14] on December 9, 2008. He counters that respondent Valdez was duly notified of the charge against him and of all the proceedings at the IBP, [15] since all notices were sent to "Suite 402 Pacific Irvine Bldg., No. 2746 Zenaida St., Makati City, Metro Manila, Philippines," [16] which is the respondent's office address indicated in his letterhead and made known to the complainant and to the public. He sent the respondent a letter dated November 27, 2006, demanding that the latter return the documents and the P900,000.00 paid to him in relation to the case. The demand letter was sent to the same address and was received by one whose signature was "RRJ," as noted in the Registry Return Receipt. [17]

Complainant Overgaard argues that respondent cannot claim ignorance of the disbarment case against him, since this is a natural offshoot of a wrongful act. [18] Complainant Overgaard points out that when respondent Valdez left for Bukidnon, he already knew that the complainant was looking for him and demanding the return of the money and documents he received from the complainant. [19] The November 27, 2006 demand letter further contained a warning that "[i]f [the respondent] will not return the documents and the money within ten (10) days from receipt hereof, [the complainant] will bring the matter to the proper authorities/forum for the redress of [his] grievances." [20] The complainant denies that he or his business partners know of respondent's whereabouts, and he argues that it is the respondent's duty as his counsel to adopt and strictly maintain a system that efficiently takes into account all notices sent to him. [21]

We hold that respondent was given reasonable notice of the complaint for disbarment against him.

A copy of the Complaint as well as the Order [22] to answer the Complaint was sent by the IBP Commission on Bar Discipline to the respondent's Makati office address, and it was duly received by the respondent. The Registry Return Receipt [23] shows that it was also received by one "RRJ," whose signature appears on the space for the signature of the addressee's agent. The respondent cannot claim lack of knowledge of the complaint for disbarment against him when the Complaint and the Order for him to submit an Answer were duly received by his agent at his Makati law office. Succeeding notices in connection with the disbarment proceedings were also sent

to the respondent's Makati law office. He cannot escape liability for his misdeeds by feigning ignorance of the disbarment case, since the notices in connection with the proceedings were sent to his office address made known to the public and properly received by his agent.

Respondent Valdez was given full opportunity, upon reasonable notice, to answer the charges against him and to present evidence on his behalf. The IBP Commission on Bar Discipline was correct in proceeding with the investigation *ex parte*, because it was due to the respondent's own fault and negligence that he was not able to submit an answer to the Complaint and participate in the investigation. Rule 138, Section 30 provides that an attorney should be heard before he is removed or suspended; but if, upon reasonable notice, an attorney fails to appear and answer the accusations against him, the matter may be dealt with *ex parte*. Rule 138, Section 30 states:

SECTION 30. Attorney to be heard before removal or suspension. -- No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*. (Emphasis supplied.)

The respondent's feeble excuse that he was no longer holding office at his Makati office address at the time the Order of the IBP Commission on Bar Discipline was sent to him is unacceptable. Ordinary prudence would have guarded against his alleged failure to receive the notices. All notices to the respondent were sent to his Makati office address, which was the address made known to the public and to the complainant. This is even the address printed on the letterhead of the Retainer Agreement between the complainant and the respondent. And although the respondent claims that he had to "make himself `scarce'"[24] due to threats to his life and safety, this does not mean that he avoids the responsibility of taking account of his mail. The respondent owes it to himself and to his clients to adopt a system whereby he would be able to receive mail sent to his law office during his absence. Assuming that circumstances would justify the respondent's abrupt abandonment[25] of his Makati office, it absolutely does not give him the license to abandon his clients as well.

This brings us to the second issue: whether or not respondent committed multiple violations of the Code of Professional Responsibility and thus his disbarment should be sustained.

The respondent argues that he did not abandon his client. He denies that he refused to perform any of his obligations under the contract for legal services between himself and the complainant. He claims that he gave the complainant legal advice, and that he searched for and interviewed witnesses in relation to the cases he was handling for the complainant.[26] He also denies that he ignored the complainant's requests for a report of the cases entrusted to his care. He claims that he gave periodic status reports on the result of his work, that he returned the documents in connection with the case, and that he rendered an accounting of the money that he actually received.

We find that respondent's disbarment should be upheld. From the facts of the case, and based on his own admissions, it is evident that he has committed multiple violations of the Code of Professional Responsibility.

In abruptly abandoning his law office without advising his client and without making sure that the cases he was handling for his client were properly attended to during his absence, and without making arrangements whereby he would receive important mail, the respondent is clearly guilty of gross negligence. A lawyer cannot simply disappear and abandon his clients and then rely on the convenient excuse that there were threats to his safety. Even assuming that there were serious threats to his person, this did not give him the permission to desert his client and leave the cases entrusted to his care hanging. He should have at least exercised reasonable and ordinary care and diligence by taking steps to ensure that the cases he was handling were attended to and that his client's

interest was safeguarded. If it was not possible for him to handle the cases entrusted to his care, he should have informed the complainant of his predicament and asked that he be allowed to withdraw from the case to enable the client to engage the services of another counsel who could properly represent him.[27] Deplorably, the respondent just disappeared, deserted his client and forgot about the cases entrusted to his care, to the complainant's damage and prejudice.

The respondent denies that he did not do anything in connection with the cases included in the Retainer Agreement. He asserts that he reviewed the documents in relation to the case and gave the complainant important advice. He claims that he travelled to Bato, Camarines Norte to negotiate for an amicable settlement with the members of the family of the adverse party in one of the cases filed against the complainant.[28] He also went to San Carlos City (Negros Oriental), Antipolo City, and other parts of Metro Manila to interview and search for witnesses for the cases that he was handling for the complainant.[29]

The respondent's disbarment is not anchored on his failure to do anything in relation the cases entrusted to his care, but on his abandonment of his client. He will not be absolved from liability on the basis alone of these inconsequential acts which he claims to have accomplished because the glaring fact remains that he has failed to perform his essential obligations to his client, to the courts and to society. As the complainant's lawyer, the respondent is expected to serve his client with competence and diligence.[30] This includes not merely reviewing the cases entrusted to his care and giving the complainant sound legal advice, but also properly representing his client in court, attending scheduled hearings, preparing and filing required pleadings, prosecuting the cases entrusted to his care with reasonable dispatch, and urging their termination without waiting for his client or the court to prod him to do so. He should not idly sit by and leave the rights of his client in a state of uncertainty.

The respondent's acts and omissions were not just a case of inaction, but they amount to deceitful conduct and are contrary to good morals. After assuring the complainant that he would protect the latter's interest and attend to the cases included in the Retainer Agreement, he abandoned his client. It was only after the complainant's own inquiry that he discovered that the respondent never appeared in court to represent the complainant in the cases filed against him, so much so that he had no knowledge that warrants of arrest were already issued against him. The respondent also failed to enter his appearance in the civil case for Mandamus, Injunction and Damages that the complainant filed. After receiving the complete amount of legal fees, giving the complainant initial legal advice, and interviewing some witnesses, the respondent just disappeared and the complainant never heard from him despite his continued efforts to contact the respondent.

The complainant put his trust in the respondent with full faith that the latter would exert his best effort and ability in the prosecution and defense of his client's cause. But instead of devotion to his client's cause, the respondent grossly neglected his duties to his client. After all the representations he made to the complainant and after receipt of the full amount of the legal fees, he absconded from his responsibilities and betrayed his client's trust. There is no excuse for this, and his gross negligence and appalling indifference is unforgivable.

On the Court's finding that the respondent refused to return the money he received from the complainant despite written and verbal demands and was not able to give a single report regarding the status of the cases, the respondent claims that he returned the documents to the complainant's representative in the middle of July 2006,[31] and that he also gave an accounting of the money he received sometime immediately after it was demanded from him on July 25 or 26, 2006. The respondent counters that although he initially received the amount of P900,000.00, he gave P300,000.00 to two intelligence operatives for locating witnesses in favor of the complainant in Antipolo City and other parts of Metro Manila.[32] He claims that only P600,000.00 was actually received by him, and from this amount he drew all expenses in connection with the complainant's cases. The respondent further avers that he made an accounting of the P600,000.00 received by him and offered to return

P250,000.00, but it was the complainant's business partner who refused to accept the P250,000.00 and insisted on the payment of the whole amount.[33]

The complainant declared that he did not receive the documents being demanded from the respondent, nor did he receive an accounting of the money he paid to the respondent. He stated in his "Opposition/Comment to the Motion for Reconsideration" that the respondent's empty claims -- that he already returned the documents sometime in the middle of July 2006 and that he rendered an accounting of the money paid to him immediately after July 25 or 26, 2006 -- are refuted by the demand letter sent by the complainant on November 27, 2006, four months after the alleged time of return.

We agree with the complainant.

If the respondent had indeed returned the documents sometime in the middle of July 2006, he would have presented a receipt to prove such turnover of documents. And if the respondent had indeed rendered an accounting of the money that was paid to him, he would have attached a received copy of the accounting to his Motion for Reconsideration. But he failed to do both. There was no proof presented. We cannot rely on his bare allegation, especially when the complainant demanded the return of the documents months after they were allegedly returned.

Neither are we persuaded by the respondent's explanation as to how and where the P900,000.00 was spent. He claims that out of the P900,000.00, he only received P600,000.00 because he paid P300,000.00 to two intelligence operatives. In paying the intelligence operatives, he stated in his Motion for Reconsideration that he deposited P100,000.00 to the Land Bank account of one Investigator Operative Collado (Collado) sometime in the second week of January 2006, and that the rest of the P200,000.00 was personally handed by him to Collado in the last week of January 2006 at McDonald's restaurant at the corner of Pasong Tamo and J.P. Rizal Streets at Makati City.[34]

Such an account offered by the respondent is insufficient to free him from liability. If the respondent indeed paid P300,000.00 to two intelligence operatives with the knowledge of the complainant, he would have presented a receipt issued by Collado, and he would have also presented a validated deposit slip or certification as proof that he deposited the amount he claims to have deposited to Collado's account. His failure to attach proof of payment of the P300,000.00 to the intelligence operatives does not only make his defense flawed, it also highlights his incompetence in handling the money he received from the client.

It is a lawyer's duty to properly account for the money he received from the client.[35] If indeed the respondent told the client that he would pay P300,000.00 to two intelligence operatives, as he claims in his Motion for Reconsideration, he should have held this money in trust, and he was under an obligation to make an accounting. It was his duty to secure a receipt for the payment of this amount on behalf of his client. But he failed to present any receipt or certification from Collado that the payment was received. Since the respondent was not able either to present an accounting of the P900,000.00 paid to him upon the complainant's demand, or to provide a sufficient and plausible explanation for where such amount was spent, he must immediately return the same.

For these reasons, and those previously stated in the September 30, 2008 Decision of this Court, we find that respondent Valdez has committed multiple violations of the canons of the Code of Professional Responsibility. He has failed to observe the fundamental duties of honesty and good faith and, thus, we sustain his disbarment.

We must emphasize that the right to practice law is not a natural or constitutional right but is in the nature of a privilege or franchise,[36] and it may be extended or withheld by this Court in the exercise of its sound discretion. As guardian of the legal profession, this Court has ultimate disciplinary power over members of the Bar in order

to ensure that the highest standards of competence and of honesty and fair dealing are maintained. We find that the respondent has fallen below such exacting standard and is unworthy of the privilege to practice law.

IN VIEW WHEREOF, the Motion for Reconsideration is DENIED. This Court's en banc decision in Administrative Case No. 7902 dated September 30, 2008, entitled Torben B. Overgaard v. Atty. Godwin R. Valdez, is AFFIRMED.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, and Peralta, JJ., concur.
Austria-Martinez, J., on official leave.

[1] Rollo, pp. 104-127.

[2] Id. at p. 124.

[3] A.C. 7902, September 30, 2008.

[4] Id. at p. 11; rollo, p. 99.

[5] Rollo, pp.104-105.

[6] Id. at p. 108.

[7] Id. at p. 105.

[8] Id. at p. 106.

[9] Id.

[10] Id.

[11] Id. at p. 106.

[12] Id. at p. 40.

[13] Id.

[14] Id. at pp. 162-176.

[15] Id. at p. 162.

[16] Id. at p. 163.

[17] Id. at p. 164.

[18] Id.

[19] Id.

[20] Id. at p. 166.

[21] Id. at p. 167.

[22] Id. at p. 13.

[23] Id.

[24] Id.

[25] Id. at p. 106

[26] Id. at pp. 116-188.

[27] Ventura v. Santos, 59 Phil. 123, 128 (1933).

[28] Rollo, pp. 114-115.

[29] Id. at pp. 117-118.

[30] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 21.

[31] Rollo, p. 121.

[32] Id.

[33] Id. at p. 122.

[34] Id.

[35] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 16, Rule 16.01.

[36] In Re: SyCip, G.R. No. X92-1, July 30, 1979, 92 SCRA 1, 10, citing, 7 C.J.S. 708.

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